

PT 97-28
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

JEWISH COUNCIL FOR)	
YOUTH SERVICES,	)	Docket Nos: 94-49-475
APPLICANT	)	94-49-476
	)	94-49-477
)	
v.	)	Real Estate Exemptions
	)	for 1994 Tax Year
)	
DEPARTMENT OF REVENUE	)	P.I.N.S: 05-26-200-001
STATE OF ILLINOIS	)	05-26-100-002
	)	05-23-400-004
)	
	)	Alan I. Marcus,
	)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Paul Applebaum of D'Ancona & Pflaum appeared on behalf of the Jewish Council for Youth Services.

SYNOPSIS: This proceeding raises the issue of whether the subject parcels qualifies for exemption from 1994 real estate taxes under 35 ILCS 200/15-65.¹ In relevant part, that provision states as follows:

¹. In *People ex rel Bracher v. Salvation Army*, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 et seq).

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

The controversy arises as follows:

On May 31, 1994, the Jewish Council for Youth Services (hereinafter "JCFYS" or the "applicant"), filed three real estate exemption complaints with the Lake County Board of Review (hereinafter the "Board"). Said complaint alleged that the subject parcels were exempt from real estate taxation under 35 ILCS 200/15-65(a). The Board reviewed these complaints and recommended to the Department of Revenue (hereinafter the "Department") that the requested exemptions be approved. On December 22, 1995, the Department rejected these recommendations by issuing three certificates finding that the parcels were not in exempt use.

Applicant filed timely requests for hearing on January 3, 1994. After holding a pre-trial conference, the Administrative Law Judge conducted an evidentiary hearing on July 30, 1996. Following submission of all evidence and a careful review of the record, it is recommended that the subject parcels be exempt from 1994 real estate taxes.

FINDINGS OF FACT:²

². In order to facilitate better organization and promote greater clarity, I have divided the Findings of Fact into the following categories: Preliminary Considerations and Description of the Subject Property (Findings 1 through 4); Applicant's Organizational Structure (Findings 5 through 11); Applicant's

A. Preliminary Considerations and Description of the Subject Property

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Group Ex. Nos. 1 and No. 2.

2. The subject properties (hereinafter referred to as the "campsite") are located on Wooster Lake in Ingelside, Illinois. They are commonly known as Henry Horner Day Camp and identified by Permanent Index Nos. 05-26-200-001, 05-26-100-002 and 05-23-400-004. Dept. Group Ex. No. 1; Applicant Ex. No. 8; Tr. p. 25.

3. The campsite encompasses 180 acres. Its improvements include two fields, a volleyball court, a boat house, numerous lodging cabins, a dining hall, a barn, a shed, two outdoor campfire venues, a pool and bathhouse, a recreation hall, an archery field two health houses and an administration building. Applicant Ex. Nos. 2, 8.

4. Applicant assumed ownership of the parcel identified by Permanent Index No. 05-23-400-004 via a conveyance and quitclaim deed dated October 21, 1924. It acquired ownership of the parcels identified by Permanent Index Nos. 05-26-100-002 and 05-26-200-001 via deeds dated (in respective order) May 4, 1939 and March 13, 1956. Applicant Ex. No. 1.

B. Applicant's Organizational Documents

5. JCFYS was originally incorporated under the name Young Men's Associated Jewish Charities on November 7, 1907. At that time,

Financial Structure (Findings 12 through 18) and Applicant's Operations and Use of the Subject Parcel (Findings 19 through 33).

its stated objects were "to inculcate in the Jewish Young Men of Chicago, Illinois, a knowledge of their duties and responsibilities in connection with Jewish Charities [sic] and philanthropies; to bring home to them the needs and requirements of the Associated Jewish Charities of Chicago and actively to assist said charities in securing funds and to do any and all things necessary, proper or incidental to rendering such assistance; to create among the Jewish Young Men of Chicago a broad and enduring fellowship and to do any and all things necessary, proper or incidental to carry out any of the foregoing." Applicant Ex. No. 3. [All punctuation and capitalization are as they appear in the original document].

6. Applicant's original Articles of Incorporation have been subject to numerous amendments. The most recent amendment, dated September 19, 1989, was executed pursuant to the General Not For Profit Corporation Act of Illinois. It changed the corporation's name from Young Men's Jewish Council to Jewish Council for Youth Services. *Id.*

7. The Internal Revenue Service confirmed JCFYS's exemption from federal income tax on March 7, 1990. This exemption, originally issued in May of 1939, was granted pursuant to Section 501(c)(3) of the Internal Revenue Code and based on the Service's conclusion that applicant qualified as an organization described in Section 509(a)(2) of that statute. Applicant Ex. No. 7.

8. JCFYS is also exempt from paying Use and related taxes in the State of Illinois. Dept. Group Ex. No. 1.

9. JCFYS's bylaws provide, *inter alia*, that:

A. Its corporate purposes and objectives are as follows:

1. To plan, coordinate, develop, implement and effectuate principles, standards and programs of social service, education, community relations and charitable, philanthropic, and eleemosynary activities for and on behalf of the youth of the community; and to furnish a training ground for leadership in the community;

2. To raise, collect and administer funds and to distribute such funds in support of the aforesaid activities consistent the purposes set forth in the corporation's organizational documents as they may be amended from time to time;

3. To exercise such other functions as are consistent with the purposes and objects authorized by the [c]orporation's Certificate of Incorporation and any amendments thereto; and,

4. As a predominantly Jewish organization, the [c]orporation shall establish and extend its services to meet the needs of primarily Jewish youth, and may extend such services without discrimination to all youth.

B. Any person who shall contribute the sum of at least \$100.00 to the corporation shall be a voting member thereof for the fiscal year in which the contribution was received;

C. Responsibility for the management of the corporation's day-to-day business affairs is vested in a Board of Directors;

D. Said board consists of not more than 75 members of the corporation;

E. The corporation shall have the following officers: president, 3 vice presidents, a treasurer, a secretary and such other officers as may be elected in accordance with the relevant provisions of the by-laws.

Applicant Ex. No. 4.

C. Applicant's Financial Structure

12. JCFYS has no capital stock or shareholders. Its fiscal year runs from July 1 through June 30. Applicant Ex. Nos. 4, 9.

13. Applicant's federal tax return (IRS Form 990, hereinafter the "return") indicates that it earned total revenues of \$4,131,404.00 during the fiscal year ended June 30, 1994. Said revenues were attributable to the following sources:

<u>SOURCE</u>	<u>AMOUNT</u>	<u>% OF TOTAL</u>
Direct Public Support	\$1,741,591.00	42% ³
Indirect Public Support	\$ 212,280.00	5%
Program Service Revenue	\$2,112,192.00	51%
Interest on Savings & Temporary Investments	\$ 82,820.00	2%
Net loss from sale of assets other than inventory	\$ (54,838.00)	1%
Other miscellaneous revenue	<u>\$ 37,359.00</u>	<1%
Total revenues	<u>\$4,131,404.00</u>	

Applicant Ex. No. 9

³. All percentages shown in this section are approximations derived by dividing the category of income or expense (e.g. direct public support) by the appropriate total. Thus, for example, $\$1,741,591.00 / \$4,131,404.00 = .422$ (rounded) or approximately 42%.

14. The return also discloses that applicant incurred total expenses of 3,307,741.00 during its 1994 fiscal year. These expenses were apportioned as follows:

<u>EXPENSE</u>	<u>AMOUNT</u>	<u>% OF TOTAL</u>
Specific assistance to individuals	\$ 52,544.00	1.6%
Compensation of officers, directors, etc.	\$ 80,000.00	2.4
Other salaries and wages	\$1,504,941.00	45%
Payroll taxes	\$ 260,079.00	7.9%
Accounting fees	\$ 154,760.00	4.7%
Supplies	\$ 245,987.00	7.4%
Telephone	\$ 39,399.00	1.2%
Postage & shipping	\$ 23,002.00	<1%
Occupancy	\$ 280,674.00	8.5%
Equipment rental and maintenance	\$ 97,632.00	3%
Printing and publications	\$ 28,652.00	<1%
Travel	\$ 169,107.00	5.1%
Conferences, conventions and meetings	\$ 38,378.00	1%
Interest	\$ 66,457.00	2%
Depreciation, etc.	\$ 163,803.00	5%
Other Expenses	<u>\$ 102,326.00</u>	3%
Total expenses	<u>\$3,307,741.00</u>	

Id.

15. The \$3,307,741.00 figure includes \$2,498,919.00 (or 75.5% of the above total) in expenses attributable to program services. These expenses were apportioned as follows:

<u>EXPENSE</u>	<u>AMOUNT</u>	<u>% OF PROGRAM SERVICE EXPENSES</u>	<u>% OF TOTAL EXPENSES</u>
Day Care Program	\$1,190,814.00	48%	36%
Various Camping Programs	<u>\$1,308,105.00</u>	52%	39.5%
	<u>\$2,498,919.00</u>		

Id.

16. The day care program provided service to 364 children in pre-school and after school programs. *Id.*

17. The camping programs provided services to 263 persons in summer day camps and resident camping programs for handicapped persons and other outside groups. *Id.*

18. Applicant incurred the following specific expenses in connection with the day care and camping programs during 1994:

<u>EXPENSE</u>	<u>AMOUNT</u>	<u>% OF TOTAL</u>
Specific assistance to individuals	\$ 52,544.00	2.1%
Other salaries and wages	\$1,202,200.00	48%
Payroll taxes	\$ 197,926.00	8%
Accounting fees	\$ 15,001.00	1%
Supplies	\$ 211,534.00	8.5 %
Telephone	\$ 23,660.00	1%
Postage & shipping	\$ 13,975.00	<1%
Occupancy	\$ 214,036.00	8.5%
Equipment rental and maintenance	\$ 90,330.00	3.6%
Printing and publications	\$ 20,783.00	1%
Travel	\$ 155,188.00	6.2%
Conferences, conventions and meetings	\$ 12,954.00	<1%
Interest	\$ 59,500.00	2.4%
Depreciation, etc.	\$ 145,635.00	5.8%
Other Expenses	\$ 83,650.00	3.3%
Total expenses	\$2,498,919.00	

Id.

D. Applicant's Operations and Use of the Subject Premises During 1994

19. Applicant operates the campsite on a year round basis but offers expanded programming in the summertime. Most of the programs center around operating Camp Red Leaf, a residential camp for developmentally-challenged children and adults. Tr. pp. 13 - 14, 25, 27, 29, 43.

20. Approximately 300 campers attended Camp Red Leaf during 1994. Those who attended suffered from a variety of emotional and physical disabilities including blindness and confinement to wheel

chairs. The camp's facilities, which include an adventure course, were specifically designed to ensure appropriate accessibility. Tr. pp. 28, 50.

21. JCFYS conducted programs related to Camp Red Leaf throughout the entire 1994 assessment year. It featured a series of one week-long residential camp sessions during the summer and offered non-residential family picnics and outing days, as well as respite care, in the off season. Applicant Ex. No. 8; Tr. pp. 14 - 15, 25 - 26, 43.

22. Respite care is a weekend or other period of time where the entire family spends time with the developmentally challenged child at the campsite. Applicant provides individual care workers for the children but also offers participating families the opportunity to attend workshops for siblings and engage in other family-oriented recreational activities. Tr. pp. 14 - 15.

23. The residential camp sessions are held from the middle of June until late August. Applicant limits these sessions to one week in order to accommodate as many different campers as possible. Applicant Ex. No. 8; Tr. pp. 27, 63.

24. Activities at the various sessions include woodworking, painting, overnight tent camping, hiking, basketball, soccer, volleyball, swimming, music, drama, creative writing, archery, and aerobic dance. Applicant Ex. No. 8.

25. Applicant's actual cost for these activities and other expenses associated with operating Camp Red Leaf, (food, staffing, etc.), amount to \$710.00 per camper. While applicant's revenues enable JCFYS to grant each camper a partial subsidy, it charges

between \$340.00 and \$380.00 in fees to those who do not require financial assistance. Applicant Ex. No. 8; Tr. pp. 16 - 17.

26. Applicant adheres to a financial aid policy for persons in need. Under this policy, applicant provides scholarships or other assistance to nearly everyone who applies and charges fees for services associated with Camp Red Leaf only to those who can afford to pay. Tr. pp. 16 - 17, 35 - 34.

27. All requests for financial assistance are reviewed by applicant's scholarship committee, which examines each application on a first come, first served basis and notifies the affected person of its decision. Applicant Ex. No. 8.

28. Applicant also makes a limited but unspecified number of scholarships that pay all fees available to public aid recipients. In addition, it accepted four campers from the Illinois Department of Children and Family Services (hereinafter "DCFS") during 1994. JCFYS subsidized these campers to the extent that DCFS payments did not cover the difference between applicant's subsidy and any fees charged. *Id.*; Tr. p. 58.

29. In addition to Camp Red Leaf, applicant also uses the campsite to operate Henry Horner Day Camp, (hereinafter "HHDC"). This eight week-long summer day camp offers various sporting and recreational activities to non-developmentally challenged children. *Id.*

30. HHDC operates between the hours of 9:00 am and 3:00 pm. Campers may attend for 8, 6, 4, or 2 week sessions which begin in mid-June and end in mid-August. Fees for these sessions are as

follows: 8 weeks, \$1,500.00; 6 weeks, \$1,125.00; 4 weeks, \$750.00; 2 weeks, \$375.00. *Id.*

31. All campers must remit a deposit of not less than \$200.00 with their registration forms. They must also pay fees according to the following schedule: If the camper registers before March 1, he/she must pay half the total fee no later than March 1, with the remainder due May 1; if the camper registers after March 1 but before May 1, he/she must pay half the total fee at the time of registration; and, if the camper registers after May 1, he/she must remit full payment with registration. *Id.*

32. Applicant does not subsidize any campers who attend HHDC. It does however, offer limited financial assistance. Except for public aid scholarships, which it does not offer to HHDC campers, applicant allocates this assistance according to the same criteria and procedures it uses in connection with operation of Camp Red Leaf. *Id.*; Tr. p. 47.

33. JCFYS also allows church and other civic groups (e.g. boy scout troops, school groups, etc.) to use the campsite in the off-season. These groups pay fees to JCFYS, which vary according to the nature and extent of any services provided, for using the campsite. Tr. pp. 45 - 46.

CONCLUSIONS OF LAW:

On examination of the record established this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject parcel from 1994 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject parcel

does not satisfy the requirements for exemption set forth in 35 **ILCS** 200/15-65 should be reversed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 et seq. The provisions of that statute that govern disposition of the instant

proceeding are found in Section 200/15-65. In relevant part, that provision states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

35 ILCS 200/15-65.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968) (hereinafter "Nordlund"); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

An analysis of whether this applicant has met its burden of proof begins with some fundamental principles: first, that the word "exclusively," when used in Section 200/15-65 and other tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Gas Research Institute v.

Department of Revenue, 145 Ill. App.3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Second, that "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively charitable activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id.*

The first step in applying the above criteria to the instant case is ascertaining the campsite's primary use. Based on the facts that applicant conducts activities related to Camp Red Leaf on a year-round basis, and spends approximately 52% of its program service expenses on that program, I conclude that the campsite is primarily used as a locus for operating Camp Red Leaf. Consequently, I further conclude that operating HHDC and letting church or other civic groups use the property are incidental uses which, in and of themselves, do not destroy exemption. See, Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971). Therefore, the remainder of my analysis must focus on the extent to which applicant's operation of Camp Red Leaf qualifies as "exclusively charitable" within the meaning of Illinois law.

In Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968), (hereinafter "Korzen"), the Illinois Supreme Court first enunciated the now-well settled guidelines used to analyze exemption claims

arising under Section 200/15-65 and its predecessors. These standards begin with the following definition of "charity," which the court used to analyze whether appellant's senior citizen's home was exempt from property taxes under the Revenue Act of 1939:

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

39 Ill.2d at 157 (citing Crerar v. Williams, 145 Ill. 625 (1893)).

The Korzen court also observed that the following "distinctive characteristics" are common to all charitable institutions:

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all who need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Id.

This applicant's primary barrier to exemption under the above criteria appears to be the fees it charges for services connected with Camp Red Leaf. Imposing such fees does not, *ipso facto* cause an otherwise "charitable" organization to forfeit its exempt status

provided that the purported "charity" admits or offers services to those who seek any benefits offered but cannot afford to pay the customary fees. Small v. Pangle, 60 Ill.2d 510, 518 (1975).

Here, the testimony of applicant's executive director, Marshall Klein, clearly and convincingly establishes that applicant imposes fees *only* on those who have the financial resources to afford same. (Tr. pp. 16 - 17) This testimony further establishes that applicant accommodates those who cannot afford to pay such fees by providing scholarships or other financial assistance to all that apply. (*Id*; Tr. pp. 35 - 36). Under these circumstances, I must conclude that applicant "dispenses charity to all who need and apply for it" and does not appear "to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses" as required by Korzen. For these reasons, and because the instant record demonstrates that the applicant satisfies all the remaining qualifications for exemption set forth in Korzen, I conclude that the Department's decision denying the subject parcels exemption from 1994 real estate taxes should be reversed.

WHEREFORE, for all the above-stated reasons, I recommend that the subject parcels be exempt from 1994 real estate tax.

Date

Alan I. Marcus,
Administrative Law Judge